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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

GUOHUA ZHU, Individually and on Behalf of )  
 All Others Similarly Situated, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 UCBH HOLDINGS, INC., THOMAS S. WU, )  
 and EBRAHIM SHABUDIN, )  
 )  
 Defendants. )

Case No. C-09-04208 JSW

CLASS ACTION

**NOTICE OF MOTION, MOTION  
 AND MEMORANDUM OF POINTS  
 AND AUTHORITIES IN SUPPORT  
 OF THE MOTION OF THE  
 LOUISIANA MUNICIPAL POLICE  
 EMPLOYEES' RETIREMENT  
 SYSTEM AND THE CITY OF  
 PHILADELPHIA BOARD OF  
 PENSIONS AND RETIREMENT TO  
 CONSOLIDATE RELATED  
 ACTIONS, FOR APPOINTMENT AS  
 LEAD PLAINTIFFS AND FOR  
 APPROVAL OF THEIR SELECTION  
 OF LEAD COUNSEL**

DATE: December 18, 2009

TIME: 9:00 a.m.

CTRM: 11, 19th Floor

1 TRAN,

2 Plaintiff,

3 vs.

4 UCBH HOLDINGS, INC.,

5 Defendants.

Case No. 09-cv-04429-JSW

6 WATERFORD TOWNSHIP GENERAL  
7 EMPLOYEES' RETIREMENT SYSTEM,

8 Plaintiff,

9 vs.

10 UCBH HOLDINGS, INC.,

11 Defendants.

Case No. 09-cv-04449-MHP

12 PEREZ,

13 Plaintiff,

14 vs.

15 UCBH HOLDINGS, INC.,

16 Defendants.

Case No. 09-cv-04492-JSW

17 NYGAARD,

18 Plaintiff,

19 vs.

20 UCBH HOLDINGS, INC.,

21 Defendants.

Case No. 09-cv-04505-VRW

22 DURBIN,

23 Plaintiff,

24 vs.

25 UCBH HOLDINGS, INC.,

26 Defendants.

Case No. 09-cv-04513-JSW

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**NOTICE OF MOTION AND MOTION**

**TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

PLEASE TAKE NOTICE that on December 18, 2009, at 9:00 a.m., or as soon thereafter as this matter may be heard in the courtroom of the Honorable Jeffrey S. White located at Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, California, 94102, the Louisiana Municipal Police Employees' Retirement System ("MPERS") and the City of Philadelphia Board of Pensions and Retirement ("Philadelphia," and together with MPERS, the "Pension Funds") will move this Court pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act") and Section 27(a)(3)(B) of the Securities Act of 1933 (the "Securities Act"), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), for an Order:

- (a) consolidating all related actions;
- (b) appointing MPERS and Philadelphia as lead plaintiffs for a class of investors who purchased securities of UCBH Holdings, Inc. ("UCBH" or the "Company"); and
- (c) approving Berman DeValerio and Trujillo Rodriguez & Richards, LLC ("Trujillo Rodriguez & Richards") as lead counsel for the class.

This Motion is made on the grounds that the six federal securities law actions brought in this Court against UCBH share common questions of law and fact and should therefore be consolidated. Moreover, the Pension Funds are the most adequate lead plaintiffs, as defined by the PSLRA, based on their losses of over \$296,000 which resulted from the wrongful conduct alleged in this action. The Pension Funds also satisfy the requirements of Federal Rule of Civil Procedure 23 because their claims are typical of other members of the class and they will fairly and adequately represent the class. Further, the Pension Funds have selected and retained counsel with substantial experience in successfully prosecuting securities fraud class actions to serve as lead counsel for the class.

The Pension Funds base this Motion on the notice of motion, the memorandum of points and authorities in support thereof, the declaration of Joseph J. Tabacco, Jr. in support thereof, the pleadings and other files herein, and such other written and oral arguments as may be presented to

1 the Court.

## 2 SUMMARY OF ARGUMENT

3 Movants, the Louisiana Municipal Police Employees' Retirement System and the City of  
4 Philadelphia Board of Pensions and Retirement, seek an order consolidating the pending  
5 complaints brought under federal securities laws against the defendants; appointing the movants  
6 as lead plaintiffs; and approving their selection of counsel as lead counsel for the proposed class.

7 The Court should consolidate the related cases because they present common issues of law  
8 and fact. Moreover, consolidation will promote judicial efficiency and conserve the resources of  
9 the Court and the parties. FED. R. CIV. P. 42(a) (2009); *Investors Research Co. v. Dist. Ct. of the*  
10 *C.D. Cal.*, 877 F.2d 777 (9th Cir. 1989); *Siegall v. Tibco Software, Inc.*, No. C 05-2146 SBA,  
11 2006 U.S. Dist. LEXIS 26780 (N.D. Cal. Feb. 24, 2006); *Mohanty v. Bigband Networks, Inc.*, No.  
12 C 07-5101 SBA, 2008 U.S. Dist. LEXIS 32764 (N.D. Cal. Feb. 13, 2008).

13 The Court should appoint movants as lead plaintiffs for the class because they have the  
14 largest financial interest in the litigation. 15 U.S.C. § 78u-4(a)(3) (2009); 15 U.S.C. § 77z-1(a)(3)  
15 (2009); *In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002); *In re Vaxgen Secs. Litig.*, No. C 03-1129  
16 JSW, 2004 U.S. Dist. LEXIS 29812 (N.D. Cal. Apr. 4, 2004) (White, J); *Mohanty*, 2008 U.S.  
17 Dist. LEXIS 32764. Also, movants' claims are typical of the class members and they are most  
18 capable of adequately representing the class. *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001);  
19 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998); *Takeda v. Turbodyne Techs., Inc.*, 67 F.  
20 Supp. 2d 1129 (C.D. Cal. 1999). Moreover, as large, institutional investors, the movants are  
21 preferred as lead plaintiffs under federal securities law. *Mohanty*, 2008 U.S. Dist. LEXIS 32764.

22 The Court should also approve movants' selection of counsel because selected counsel  
23 will provide high quality legal representation and will effectively protect the interests of the class.  
24 15 U.S.C. § 78u-4(a)(3); 15 U.S.C. § 77z-1(a)(3); *Cavanaugh*, 306 F.3d 726.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On September 11, 2009, Guohua Zhu filed a class action in this Court on behalf of all persons who purchased securities of UCBH during the period between April 24, 2008 and September 8, 2009, inclusive (the “Class”). The Zhu complaint named UCBH, Thomas S. Wu and Ebrahim Shabudin as defendants. Since then, five additional plaintiffs have filed complaints in this Court asserting largely identical claims against UCBH and its current and former officers and alleging identical class periods of April 24, 2008 through September 8, 2009, inclusive (the “Class Period”).

Five of the complaints allege that throughout the Class Period, defendants violated federal securities laws by issuing materially false and misleading statements that artificially inflated UCBH’s stock price. The plaintiffs claim these statements violated Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5, promulgated thereunder by the Securities and Exchange Commission (“SEC”). One complaint alleges these claims and additional violations of Sections 11, 12, and 15 of the Securities Act in conjunction with a public offering conducted by UCBH on June 5, 2008.

UCBH is a Delaware corporation with its headquarters at 555 Montgomery Street, San Francisco, California. UCBH is the holding company for United Commercial Bank. United Commercial Bank provides retail and business banking services at over fifty branches throughout California. It also has branches in other states and Asia. United Commercial Bank caters principally to the financial needs of Chinese communities in the United States and to American companies doing business in China.

As alleged in the complaints, defendants issued false and misleading statements during the Class Period about UCBH’s financial health that artificially inflated the price of UCBH’s common stock. Specifically, the complaints alleged that defendants made untrue or misleading statements regarding the Company’s financial picture by failing to disclose millions of dollars of loan charge-offs and other information about bad loans held by UCBH. Revelation of the true financial condition of UCBH caused its stock price to lose 14% of its value in one day (dropping

1 from the previous day's closing of \$1.19 to close at \$1.02 on September 8, 2009).

2 During the Class Period, MPERS purchased over 64,000 shares of UCBH common stock,  
3 including net purchases of 38,600 shares during the Class Period. MPERS lost over \$148,000 as  
4 a result of defendants' false and/or misleading statements. Philadelphia purchased 27,650 shares  
5 of UCBH common stock, including net purchases of 27,650 during the Class Period. It also lost  
6 over \$148,000 as a result of defendants' false and/or misleading statements. Defendants' conduct  
7 caused the Pension Funds to collectively suffer losses of over \$296,000.

## 8 **II. ARGUMENT**

### 9 **A. THE RELATED ACTIONS SHOULD BE CONSOLIDATED**

10 Federal Rule of Civil Procedure 42(a) grants the Court broad discretion to consolidate  
11 cases on its docket. FED. R. CIV. P. 42(a). Rule 42(a) provides that, "if actions before the court  
12 involve a common question of law or fact, the court may . . . consolidate the actions." *See also*  
13 *Investors Research Co.*, 877 F.2d at 777 ("the district court has broad discretion under [Rule  
14 42(a)] to consolidate cases pending in the same district.").

15 Consolidation is proper when individual cases involve common questions of law or fact.  
16 *See id.*; *Siegall*, 2006 U.S. Dist. LEXIS 26780, at \*\*5-6 ("[The PSLRA] directs that cases should  
17 be consolidated when more than one action is filed on behalf of a class asserting substantially the  
18 same claim or claims."). Securities class actions are particularly suitable for consolidation.  
19 *Mohanty*, 2008 U.S. Dist. LEXIS 32764, at \*\*9-10 ("[C]lass action shareholder suits are ideally  
20 suited to consolidation because their unification expedites proceedings, reduces duplication, and  
21 minimizes the expenditure of time and money by all concerned. Consolidation facilitates  
22 discovery, conserves judicial resources and reduces the confusion and delay that result from  
23 prosecuting related class actions separately.") (internal citation omitted).

24 The Court should consolidate the following related actions, now pending in this District:

Name & Case No.	Filed	Judge Assigned
<i>Zhu v. UCBH Holdings, Inc.</i> , 09-cv-04208-JSW	Sept. 11, 2009	Hon. Jeffrey S. White
<i>Tran v. UCBH Holdings, Inc.</i> , 09-cv-04429-JSW	Sept. 21, 2009	Hon. Jeffrey S. White

Name & Case No.	Filed	Judge Assigned
<i>Waterford Township General Employees' Retirement System v. UCBH Holdings, Inc.</i> , 09-cv-04449-MHP	Sept. 22, 2009	Hon. Marilyn Hall Patel
<i>Perez v. UCBH Holdings, Inc.</i> , 09-cv-04492-JSW	Sept. 23, 2009	Hon. Jeffrey S. White
<i>Nygaard v. UCBH Holdings, Inc.</i> , 09-cv-04505-VRW	Sept. 24, 2009	Hon. Vaughn R. Walker
<i>Durbin v. UCBH Holdings, Inc.</i> , 09-cv-04513-JSW	Sept. 24, 2009	Hon. Jeffrey S. White

Consolidation of these cases will promote judicial efficiency and conserve the resources of the Class and other parties. All six complaints share common questions of law and fact. They name the same core defendants: UCBH, Thomas Wu, Ebrahim Shabudin and Craig S. On.<sup>1</sup> All allege that defendants made the same or similar untrue, false and/or misleading statements about UCBH's financial condition in order to artificially inflate the price of UCBH common stock in violation of the federal securities laws.

For these reasons, consolidation of the complaints is appropriate under Federal Rule 42(a).

**B. THE PENSION FUNDS SHOULD BE APPOINTED LEAD PLAINTIFF BECAUSE THEY HAVE THE LARGEST FINANCIAL LOSSES AND ARE THE MOST CAPABLE OF ADEQUATELY REPRESENTING THE INTERESTS OF THE CLASS**

The PSLRA sets forth a three step procedure for the appointment of lead plaintiffs in class actions brought under the Exchange Act. 15 U.S.C. § 78u-4(a)(3)(A)-(B); 15 U.S.C. § 77z-1(a)(3)(A)-(B); *Cavanaugh*, 306 F.3d at 729. First, within twenty days of filing a class action, the filing plaintiff must publish a notice advising members of the purported class of the pendency of the action, the claims asserted, the purported class period, and their right to move the court for appointment as lead plaintiff of the purported class. 15 U.S.C. § 78u-4(a)(3)(A)(i); 15 U.S.C. § 77z-1(a)(3)(i).

Second, upon considering all motions for appointment as lead plaintiff filed in response to the notice, the court appoints "the presumptively most adequate plaintiff" to serve as lead plaintiff. The "presumptively most adequate plaintiff" is the person, or group of persons, that (1)

<sup>1</sup> While the Zhu and Durbin complaints do not name Craig S. On as a defendant, the other four do.

has either filed the complaint or made a motion in response to a notice; (2) has the largest financial interest in the relief sought by the class; and (3) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I); *Cavanaugh*, 306 F.3d at 729. *See also Vaxgen Secs. Litig.*, 2004 U.S. Dist. LEXIS 29812, at \*8; *Mohanty*, 2008 U.S. Dist. LEXIS 32764, at \*7; *Query v. Maxim Integrated Prods., Inc.*, 558 F. Supp. 2d 969, 973 (N.D. Cal. 2008).

Third, the court must then “give other plaintiffs an opportunity to rebut the presumptive lead plaintiff’s showing that it satisfies Rule 23’s typicality and adequacy requirements.” *Cavanaugh*, 306 F.3d at 730. Only proof that the presumptively most adequate plaintiff “will not fairly and adequately protect the interests of the class” or is “subject to unique defenses that render such plaintiff incapable of adequately representing the class” can rebut the presumption in favor of appointing the presumptively most adequate plaintiff as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); 15 U.S.C. § 77z-1(a)(3)(B)(iii)(II); *Query*, 558 F. Supp. 2d at 973.

### **1. Notice of Pendency**

Plaintiff in the first-filed action caused notice to be published through Marketwire on September 11, 2009. The notice announced that a securities class action had been filed against the defendants and advised UCBH investors of the sixty day timeframe for filing a motion for appointment as lead plaintiff.<sup>2</sup> *See* Declaration of Joseph J. Tabacco, Jr. in Support of the Motion of the Louisiana Municipal Police Employees’ Retirement System and the City of Philadelphia Board of Pensions and Retirement to Consolidate Related Actions, for Appointment as Lead Plaintiffs and for Approval of their Selection of Lead Counsel (“Tabacco Decl.”), Exhibit A.

MPERS and Philadelphia have filed this motion before the expiration of the sixty day period since publication of the notice and have filed the requisite certifications. *See* Tabacco Decl., Exs. C and E.

<sup>2</sup> November 10, 2009 is the deadline date for filing a motion for appointment as lead plaintiff.

**2. The Pension Funds Are the Presumptive Lead Plaintiffs Because They Have the Largest Financial Interest in the Relief Sought By the Class**

**a. The Pension Funds Have the Largest Financial Losses**

The PSLRA establishes a rebuttable presumption that the lead plaintiff should be the “person” or “group of persons” who “has the largest financial interest in the relief sought by the class,” and who also satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I); *Mohanty*, 2008 U.S. Dist. LEXIS 32764, at \*12 (“[D]istrict courts typically equate ‘largest financial interest’ with the amount of potential recovery.”) (citing *In re Critical Path, Inc. Secs. Litig.*, 156 F. Supp. 2d 1102, 1107-08 (N.D. Cal. 2001); *In re Network Assocs., Inc. Secs. Litig.*, 76 F. Supp. 1017, 1030 (N.D. Cal. 1999)). Courts calculate a plaintiff’s financial interest “through accounting methods that are both rationally and consistently applied to establish which one has the most to gain from the lawsuit.” *Vaxgen Secs. Litig.*, 2004 U.S. Dist. LEXIS 29812, at \*9 (internal quotation marks omitted) (quoting *Cavanaugh*, 306 F.3d at 730).

During the Class Period, the Pension Funds purchased 66,250 shares of UCBH common stock and consequently lost \$296,906 under the First-In-First-Out (“FIFO”) and \$297,083 under the Last-In-Last-Out (“LIFO”) methodologies.<sup>3</sup> The Pension Funds are unaware of any potential movant with larger losses and therefore believe that their investment in UCBH securities and their losses from those investments exceed those of the other qualified movants seeking appointment as lead plaintiff. Therefore, the Pension Funds have the largest financial interest in the relief sought by the Class.

**b. As Institutional Investors, the Pension Funds Are Preferred as Lead Plaintiffs**

In passing the PSLRA, Congress expressed a clear preference for institutional investors to lead securities class action lawsuits. *See* H.R. Conference Report on Securities Litigation

<sup>3</sup> MPERS purchased 64,000 shares in UCBH common stock and consequently lost \$148,846 under both FIFO and LIFO. *See* Tabacco Decl., Ex. F. Philadelphia purchased 27,650 shares in UCBH common stock during the Class Period. It consequently lost \$148,060 and \$148,237 under FIFO and LIFO, respectively. *See id.*

1 Reform, S. REP. NO. 104-98, at 11 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 690 (“The  
 2 Committee believes that increasing the role of institutional investors in class actions will  
 3 ultimately benefit the class and assist the courts. . . [and] believes that an institutional investor  
 4 acting as lead plaintiff can, consistent with its fiduciary obligations, balance the interests of the  
 5 class with the long-term interests of the company and its public investors.”); *Mohanty*, 2008 U.S.  
 6 Dist. LEXIS 32764, at \*17 (“It is true that Congress’s intent in enacting the PSLRA provisions  
 7 governing the appointment of lead plaintiff was, in part, to increase the likelihood that  
 8 institutional investors will serve as lead plaintiffs.”) (citing *In re Veeco Instruments, Inc.*, 233  
 9 F.R.D. 330, 332-33 (S.D.N.Y. 2005)); *Network Assocs., Inc. Secs. Litig.*, 76 F. Supp. 2d at 1020  
 10 (“Congress expected that the lead plaintiff would normally be an institutional investor with a  
 11 large stake in the outcome.”).

12 The Pension Funds are exactly the types of institutional investors envisioned as lead  
 13 plaintiffs by the PSLRA. As institutional investors, the Pension Funds fully understand the role  
 14 of fiduciaries and possess the financial sophistication, experience and resources to ensure that  
 15 lead counsel will litigate in the best interests of the Class. They fully understand the complexities  
 16 of securities litigation and class actions, and their strength and position as institutional investors  
 17 helps them command the best possible recovery from defendants.

18 MPERS manages approximately \$1.2 billion in net assets and manages the pension and  
 19 benefit funds of approximately 12,500 employee members, retirees and beneficiaries. *See*  
 20 Declaration of R. Randall Roche in Support of the Motion of the Louisiana Municipal Police  
 21 Employees’ Retirement System and the City of Philadelphia Board of Pensions and Retirement  
 22 to Consolidate Related Actions, for Appointment as Lead Plaintiffs and for Approval of Their  
 23 Selection of Lead Counsel (“Roche Decl.”), filed herewith as Exhibit B to the Tabacco Decl.  
 24 MPERS also has previously served as lead or co-lead plaintiff in other securities class actions,  
 25 providing it with important experience managing complex litigation. *See* Certification of Plaintiff  
 26 Louisiana Municipal Police Employees’ Retirement System Pursuant to Federal Securities Law  
 27 and Local Rule 3-7(c), Ex. 2, filed herewith as Exhibit C to the Tabacco Decl. MPERS is  
 28 therefore an institutional investor with ample qualifications to serve as lead plaintiff in this

1 securities class action.

2 Philadelphia's portfolio represents the pension and benefit funds of approximately 33,000  
3 members, retirees and beneficiaries and billions of dollars in assets. *See* Declaration of Shelley  
4 Smith in Support of the Motion of the Louisiana Municipal Police Employees' Retirement  
5 System and the City of Philadelphia Board of Pensions and Retirement to Consolidate Related  
6 Actions, for Appointment as Lead Plaintiffs and for Approval of Their Selection of Lead Counsel  
7 ("Smith Decl."), filed herewith as Exhibit D to the Tabacco Decl., ¶ 3. Philadelphia, like  
8 MPERS, also has practical litigation management experience from its strong track record of  
9 serving as lead or co-lead plaintiff in certain securities class actions. *See* Certification of the City  
10 of Philadelphia Board of Pensions and Retirement Pursuant to Federal Securities Laws and Local  
11 Rule 3-7(c), filed herewith as Exhibit E to the Tabacco Decl., ¶ 5. Philadelphia is therefore also  
12 well-qualified to serve as lead plaintiff in this case.

13 Indeed, MPERS and Philadelphia already have a track record of successfully working  
14 together as lead plaintiffs on behalf of a class of investors in the securities fraud class action  
15 captioned *In re KLA-Tencor Securities Litigation*, Case No. C 06-04065 (CRB) (the "KLA  
16 Action"). Working with the same counsel as here, the Pension Funds were able to obtain what  
17 counsel believe was the fifth-largest settlement in any stock options back-dating case. The  
18 Honorable Charles R. Breyer complimented the Pension Funds and their counsel, Berman  
19 DeValerio and Trujillo Rodriguez & Richards, saying "I appreciate the fact that you've done an  
20 outstanding job, and you've been entirely reasonable in what you've done." Tabacco Decl., Ex.  
21 G. As they did in the KLA Action, the Pension Funds will cooperate to ensure the effective  
22 prosecution of this class action and to maximize the recovery for the Class. MPERS and  
23 Philadelphia have already agreed upon their approach to this case, consistent with their previous  
24 working relationship. They have selected counsel and agreed upon the best approach to  
25 managing counsel and how to best ensure success for the Class. *See* Roche Decl. ¶¶ 10-12; Smith  
26 Decl. ¶¶ 9-11.

### 3. The Pension Funds Satisfy the Requirements of Rule 23

The PSLRA also requires that the lead plaintiff must satisfy the requirements of Federal Rule of Civil Procedure 23.<sup>4</sup> 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc); 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I)(cc). Courts applying the PSLRA focus principally on the typicality and adequacy elements of Rule 23 in appointing a lead plaintiff. *Rubke v. Capital Bancorp, Ltd.*, No. C 05-4800 PJH, 2006 U.S. Dist. LEXIS 25170, at \*8 (N.D. Cal. Mar. 31, 2006) (“If this plaintiff [with the largest financial losses] then makes a showing that they meet the Rule 23(a) ‘typicality’ and ‘adequacy’ requirements, the court must then consider this plaintiff the presumptive lead plaintiff.”). A prima facie showing of typicality and adequacy will qualify a movant for appointment as lead plaintiff. *Schrivver v. Impac Mortgage Holdings, Inc.*, No. SACV 06-31 CJC, 2006 U.S. Dist. LEXIS 40607, at \*16 (C.D. Cal. May 1, 2006).

#### a. The Pension Funds’ Claims Are Typical of the Claims of the Class

The typicality requirement of Federal Rule of Civil Procedure 23 is satisfied when the lead plaintiff’s claims arise from the same event or course of conduct that gives rise to claims of other class members and all claims are based on the same legal theory. *Armstrong*, 275 F.3d at 868 (“Typicality . . . is said to require that the claims of the class representatives be typical of those of the class, and to be satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendants’ liability.”) (citation and quotation marks omitted). Typicality exists even among claims with minor distinctions. *Hanlon*, 150 F.3d at 1020 (“[C]laims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.”); *Rubke*, 2006 U.S. Dist. LEXIS 25170, at \*8 (same).

Here, the Pension Funds acquired UCBH securities during the Class Period. They did so at prices artificially inflated by the false statements and omissions of the defendants and they

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<sup>4</sup> Rule 23(a) requires that (1) the class be so numerous that joinder of all members is impracticable; (2) questions of law or fact common to the class exist; (3) such claims are typical of those of the class; and (4) the representatives will fairly and adequately protect the interests of the class. FED. R. CIV. P. 23(a).

suffered damages as a result. The Pension Funds' claims, therefore, arise from the same events and defendants' same course of conduct and are based on the same legal theory as the Class' claims. Indeed, the Pension Funds' claims are identical or virtually identical to those of other Class members who invested in UCBH securities during the Class Period and sustained losses as a consequence of defendants' misrepresentations. Thus, the Pension Funds fully satisfy the typicality requirement of Rule 23.

**b. The Pension Funds Will Fairly and Adequately Represent the Interests of the Class**

The adequacy of representation requirement of Rule 23 is satisfied where it is established that a representative party "will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4); *Rubke*, 2006 U.S. Dist. LEXIS 25170, at \*\*8-9. Accordingly, the Ninth Circuit has held that "[r]esolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. Further, the class representative must also have "sufficient interest in the outcome of the case to ensure vigorous advocacy." *Takeda*, 67 F. Supp. 2d at 1137.

The Pension Funds fully meet the adequacy requirement. First, the Pension Funds, like every member of the Class, purchased UCBH securities during the Class Period and suffered losses from defendants' untrue, false and/or misleading statements. Their interests and those of their counsel are, therefore, aligned with, and not adverse to, those of the Class.

Second, as experienced institutional investors with previous, successful experience working together, the Pension Funds will effectively manage this litigation and vigorously represent the interests of all Class members. To that end, they have already coordinated with each other and established guidelines on how they will jointly manage the litigation and supervise counsel in this case. *See* Roche Decl., ¶ 10; Smith Decl., ¶ 9. They have submitted the requisite certifications and declarations which confirm that they understand and are willing to assume the responsibilities of a lead plaintiff and commitment to actively manage counsel and the prosecution of the litigation. The declarations detail the efforts the Pension Funds will make to

1 keep informed of the events of the litigation, communicate with and supervise their counsel and  
 2 directly participate in important litigation decisions. The Pension Funds have also retained some  
 3 of the most qualified and experienced securities class action attorneys to represent the Class.  
 4 Tobacco Decl., Exs. G & H. For these reasons, the Pension Funds are more than adequate class  
 5 representatives.

6 **C. THE COURT SHOULD APPROVE THE PENSION FUNDS' SELECTION**  
 7 **OF LEAD COUNSEL**

8 The PSLRA vests authority in the lead plaintiff to select lead counsel, subject to approval  
 9 by the court. 15 U.S.C. § 78u-4(a)(3)(B)(v); 15 U.S.C. § 77z-1(a)(3)(B)(v); *Cavanaugh*, 306 F.3d  
 10 at 734 (“While the appointment of counsel is made subject to the approval of the court, the  
 11 [PSLRA] clearly leaves the choice of class counsel in the hands of the lead plaintiff.”). The Court  
 12 should not interfere with lead plaintiff’s selection unless necessary to protect the interests of the  
 13 class. *Id.*

14 The Pension Funds have retained the law firms of Berman DeValerio and Trujillo  
 15 Rodriguez & Richards to serve as lead counsel for the Class. Berman DeValerio has extensive  
 16 experience litigating complex securities class actions and has successfully obtained excellent  
 17 recoveries on behalf of defrauded investors. Tobacco Decl. Ex. G. Berman DeValerio has the  
 18 skill and knowledge that will enable it to prosecute this action effectively and expeditiously.  
 19 Roche Decl. ¶ 12.

20 Like Berman DeValerio, Trujillo Rodriguez & Richards has a proven track record of  
 21 successful recoveries in complex securities fraud class actions. Trujillo Rodriguez & Richards  
 22 has the skill and knowledge necessary to prosecute this action effectively and expeditiously.  
 23 Tobacco Decl. Ex. H. Philadelphia is also very familiar with the skills of its selected counsel,  
 24 having also retained the firm on a number of occasions, including the KLA Action. Smith Decl. ¶  
 25 11.

26 Furthermore, as noted above, Berman DeValerio and Trujillo Rodriguez & Richards have  
 27 collaborated successfully in the past in a number of cases, including the KLA Action. Roche  
 28 Decl. ¶ 9; Smith Decl. ¶ 8. The Court may therefore rest assured that, by approving the Pension

Funds' choice of co-lead counsel, the Class will receive the highest caliber of legal representation.

### III. CONCLUSION

MPERS and Philadelphia respectfully request that the Court consolidate the above-captioned related actions, appoint MPERS and Philadelphia as lead plaintiffs, approve their selection of Berman DeValerio and Trujillo Rodriguez & Richards as lead counsel, and grant such other relief as the Court may deem to be just and proper.

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**BERMAN DeVALERIO**

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